

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 304 of 1997

and

FIRST APPEAL No. 2067 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

HAMUDBIN ALAM MALEKI

Versus

ARAB ABDULLA SULEMANBHAI
(in FA 304/97)

CHARITY COMMISSIONER

Versus

ARAB ABDULLA SULEMANBHAI & ORS.
(IN fa 2067/97)

Appearance:

MR NILESH A PANDYA for Petitioners
MR MB FAROOQUI for Respondent No. 1 & 2
MR SJ DAVE, A.G.P. for Respondent No. 3
(In First Appeal No.304/97)

Mr.M.I.MERCHANT for Petitioner
Mr.M.B.FAROOQUI for Respondents No.1 & 2
Mr.S.J.Dave, A.G.P. for Respondent No.3
(In First Appeal No. 2067/97)

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 16/09/97

ORAL COMMON JUDGEMENT

Both these Appeals arise from the Judgment and order dated 31.12.1996 rendered by the learned Assistant Judge, Vadodara in Trust Suit No.4 of 1985. The order impugned in these Appeals would read as under :

"The Suit is partly allowed. The Suit against the defendant No.1 is abated and hence no any relief is granted against defendant No.1.

The defendant No.2 is hereby restrained from preventing the plaintiffs' in acting and managing as trustees of the Arab Jamat Trust till they are in office as trustees. There shall be no order as to costs."

2. Both these Appeals have been admitted and by consent of the learned Advocate they have been taken up for final disposal today. However, before the Appeals are finally disposed of it would be necessary to reproduce the order passed by this Court in Civil Application NO.1520 of 1997 in First Appeal No.304 of 1997. The order would read as under :

"Rule. Opponent No.1 present in the Court in person waives the service of Rule. Mr.Parmar, Id.A.G.P. waives the service of Rule for and on behalf of opponent No.3. Opponent No.2 is not present. He be served. The opponents No.1 & 2, pending the final decision shall maintain the true and correct accounts of the Trust and will produce before the Court as and when ordered to do so. The applicant as well as opponents No.1 & 2, will be free to manage the affairs of the Trust jointly and they may pass necessary resolution or take appropriate action either unanimously or by majority."

3. After some amount of submissions it has been pointed out, of course jointly, that the Suit which was permitted to be filed by the Charity Commissioner under Section 51 of the Bombay Public Trust Act, 1950, contained a relief of framing of scheme for the proper administration of the Trust. On going through the impugned Judgment and order passed by the learned Assistant Judge it does appear that neither the parties nor the learned Judge has concentrated upon the aforesaid

prayer of framing the scheme appearing in the plaint. Simply because defendant No.1 in the Suit who was managing the affairs of the trust and against whom some of the reliefs were directed had expired, it cannot be said that the suit has abated. The proper course would have been to issue notice to the concerned parties or to issue public notice for the purpose of following the main reliefs, one of which was to frame the scheme of the Trust. To reiterate, the main relief of framing of scheme appears to have escaped the attention of all concerned.

4. In above view of the matter the impugned Judgment and order which has been challenged in both these Appeals, one of which has been filed by the learned Joint Charity Commissioner, will have to be quashed and set aside and the matter shall have to be remanded to the District Court for framing the scheme of the Trust by issuing appropriate direction in that regard.

5. Following order is, therefore, passed :

The deceased defendant No.1 in the Suit shall stand replaced by the appellants Hamudbin Alam Maleki (Hamudbin Salam Maleki) and Mohmadhanifbin Mohmadganam as defendants No.1A and 1B. The office of the District Court will make necessary amendment in the cause title of the plaint.

Both the parties, viz. the plaintiffs on one side and the defendants 1(A) and 1(B) on the other side will submit their proposed draft scheme before the District Court.

The learned District Judge will thereafter follow appropriate procedure of law for the purpose of framing of the scheme and proceed to frame the scheme after hearing the parties and if necessary after permitting the parties to adduce evidence.

The Suit so revived before the District Court shall be disposed of as expeditiously as possible.

Till the aforesaid Suit is disposed of, interim arrangement which has been directed by this Court and reproduced in the order produced hereinabove shall work and the interim Trustees, as per order reproduced hereinabove, will produce their accounts, if any, before the District Court.

It will be open to the Charity Commissioner/Joint

Charity Commissioner also to make suggestions before the District Court in the matter of scheme.

Both these Appeals will stand allowed only in the aforesaid terms.

Office of this Court will immediately send back R & P as also the writ of the aforesaid directions.

There shall be no order as to costs.

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